

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2009-CP-01788-COA

ANTONIO WILLIAMS

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT: 07/02/2009
TRIAL JUDGE: HON. W. SWAN YERGER
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA H. TEDDER
ATTORNEY FOR APPELLEE: ANTONIO WILLIAMS (PRO SE)
NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION: MOTION FOR POST-CONVICTION RELIEF
DENIED
DISPOSITION: AFFIRMED - 06/14/2011
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

EN BANC.

ISHEE, J., FOR THE COURT:

¶1. In 1987, Antonio Williams was convicted of murder and sentenced by the Hinds County Circuit Court to life in the custody of the Mississippi Department of Corrections (MDOC) without eligibility for parole or probation. Because Williams had been previously convicted of burglary on two separate occasions, Mississippi's habitual-offender statute was applied to his sentence. On direct appeal, Williams's conviction was affirmed. In July 2009, Williams filed a motion for post-conviction relief (PCR), which was denied. Aggrieved, Williams now appeals. Finding no error, we affirm.

FACTS

¶2. In December 1987, a Hinds County jury convicted Williams of murder. Upon his conviction, the prosecution moved the trial court to apply Mississippi's habitual-offender statute to Williams's sentence. In support thereof, the prosecution introduced documents showing that Williams had been previously convicted on two separate occasions of burglary, and had served time for both convictions. Williams's counsel made no objection to the documents. Thereafter, the trial court sentenced Williams as a habitual offender to life without eligibility for parole or probation. Williams's subsequent appeal of the conviction was denied. *See Williams v. State*, 566 So. 2d 469 (Miss. 1990).

¶3. In April 2009, Williams filed a PCR motion to vacate his sentence, claiming the application of the habitual-offender statute was illegal. The trial court succinctly denied the PCR motion, stating: "The Court finds that it plainly appears from the face of the motion, exhibits and prior proceedings in the case, that Petitioner's Motion is without merit and that the Petitioner is not entitled to any relief on his claims."

¶4. Williams now appeals and argues the following: he received ineffective assistance of counsel during the sentencing phase of his murder conviction; application of the habitual-offender statute was illegal because his prior conviction of burglary was unconstitutional; and finally, the trial court erred by denying his PCR motion without conducting a hearing on Williams's claims. Finding no error, we affirm.

DISCUSSION

I. Ineffective Assistance of Counsel During Sentencing

¶5. Williams asserts that his counsel was constitutionally ineffective during the sentencing

phase of his murder conviction. It is well settled that the standard of review when discussing a claim of ineffective assistance of counsel is the two-prong analysis originally set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). In order to prove ineffective assistance of counsel, Williams must show the following: “[f]irst, . . . that counsel’s performance was deficient. . . . [s]econd, . . . that the deficient performance prejudiced the defense.” *Liddell v. State*, 7 So. 3d 217, 219 (¶6) (Miss. 2009) (quoting *Strickland*, 466 U.S. at 687). Furthermore, “[i]n considering a claim of ineffective assistance of counsel, an appellate court must strongly presume that counsel’s conduct falls within a wide range of reasonable professional assistance.” *Id.* (¶6) (quoting *Strickland*, 466 U.S. at 689).

¶6. In support of his ineffective-assistance-of-counsel claim, Williams references his trial counsel’s failure to object to the court’s consideration of documents produced by the prosecution as proof of Williams’s two prior burglary convictions. Williams argues that both of the prior convictions are unconstitutional, also due to ineffective assistance of counsel; therefore, the court’s application of the habitual-offender statute, Mississippi Code Annotated section 99-19-81 (Rev. 2007), was illegal.

¶7. Williams asserts that his trial counsel should have raised the claims that he had received ineffective assistance of counsel in the prior convictions. Williams states that his trial counsel’s failure to advise the court of Williams’s prior alleged ineffective assistance of counsel allowed for his purportedly improper conviction in the instant case under the habitual-offender statute.

¶8. The Mississippi Supreme Court has recognized that where a party to a PCR motion

offers only his affidavit in support of an ineffective-assistance-of-counsel claim, the claim is without merit. *Brooks v. State*, 573 So. 2d 1350, 1354 (Miss. 1990). Additionally, this Court has previously held that evidence of counsel’s deficient performance must be alleged with “specificity and detail.” *Kinney v. State*, 737 So. 2d 1038, 1041 (¶8) (Miss. Ct. App. 1999) (citation omitted).

¶9. Here, while Williams assigns error as to his counsel’s performance, he only offers his own allegations as evidence. Furthermore, assuming arguendo that Williams’s allegations fulfill the evidentiary requirements for asserting an ineffective-assistance-of-counsel claim, we cannot find that any of the alleged errors prejudiced Williams’s defense.

¶10. As such, Williams cannot satisfy either Strickland prong. Accordingly, we affirm the trial court’s denial of Williams’s claim of ineffective assistance of counsel. This issue is meritless.

II. Constitutionality of Prior Convictions and Legality of Habitual Offender Status

¶11. Williams asserts that his two prior felony convictions are unconstitutional because his guilty pleas were not voluntarily and intelligently given; hence, the application of the habitual-offender statute to his sentence was unconstitutional. It is well-settled law that when reviewing the voluntariness of guilty pleas, an appellate court “will not set aside findings of a trial court sitting without a jury unless such findings are clearly erroneous.” *Walton v. State*, 16 So. 3d 66, 70 (¶8) (Miss. Ct. App. 2009) (quoting *House v. State*, 754 So. 2d 1147, 1152 (¶24) (Miss. 1999)).

¶12. Here, Williams attempts to address the voluntariness of the guilty pleas that he entered

in 1982 for two separate burglary convictions. However, Williams has never challenged the validity of his guilty pleas until this appeal. This Court is not procedurally positioned to address Williams's arguments regarding his guilty pleas since those issues are not properly before us. Additionally, even if Williams's claims regarding his guilty pleas were properly before this Court, the claims would be time-barred pursuant to the three-year statute of limitations set forth in Mississippi Code Annotated section 99-39-5 (Supp. 2010). Accordingly, Williams's prior unchallenged convictions were valid at the time the trial court applied the habitual-offender statute to Williams's sentence.

¶13. With regard to a trial court's decision to apply the habitual-offender statute, the Mississippi Supreme Court has stated the following:

At a hearing conducted by a trial court . . . for determining the defendant's status as [a] habitual offender, the prosecution must show[,] and the trial court must determine[,] that the records of the prior convictions are accurate, that they fulfill the requirements [for habitual offender status], and that the defendant sought to be so sentenced is indeed the person who was previously convicted. Once the above mentioned factors have been ascertained, the trial court is not required to go beyond the face of the prior convictions sought to be used in establishing the defendant's status as [a] habitual offender.

Phillips v. State, 421 So. 2d 476, 481 (Miss. 1982) (citations omitted).

¶14. In this case, the trial court considered valid prior convictions in its decision to apply the habitual-offender statute to Williams's sentence. We cannot conclude that the trial court improperly carried out its charge when it enhanced Williams's sentence under the habitual offender statute. Therefore, we find this issue is without merit.

III. Failure of Trial Court to Grant Hearing on PCR Motion

¶15. Williams asserts that the trial court erred in failing to grant an evidentiary hearing on

his PCR motion before denying the motion. It is well settled that: “An evidentiary hearing is not necessary where the allegations in a petition for post-conviction relief are specific and conclusory.” *Russell v. State*, 44 So. 3d 431, 434 (¶6) (Miss. Ct. App. 2010) (quoting *Cole v. State*, 666 So. 2d 767, 777 (Miss. 1995)). “The trial court is not required to grant an evidentiary hearing on every petition it entertains.” *Byrne v. State*, 30 So. 3d 1264, 1266 (¶7) (Miss. Ct. App. 2010) (citation omitted).

¶16. In its order, the trial court in the instant case stated that all “motions, exhibits and prior proceedings in the case” had been sufficiently reviewed prior to denying Williams’s PCR motion. After reviewing the record, we agree with the trial court that an evidentiary hearing was not required prior to denying Williams’s PCR motion. Williams’s allegations lacked any disputed information that would have necessitated a hearing. His allegations were specific and conclusory. Accordingly, this issue is meritless.

¶17. Although Williams’s issues on appeal have been found to be without merit, the dissent raises a separate question of this Court’s jurisdiction over the instant case. The dissent argues that it is unclear whether or not Williams obtained permission from the Mississippi Supreme Court to file his appeal in the circuit court. However, neither party has asserted the issue of jurisdiction. Additionally, although the dissent raises the question of what may be on file with the Mississippi Supreme Court Clerk’s Office, no such information is contained within the record of which we are bound. Indeed, the record is deplete as to a showing of lack of jurisdiction, and this Court has no personal knowledge that we lack jurisdiction over the matter. Again, as an appellate court, we are bound by the record and the record alone in our review of Williams’s claim. *See e.g. McCullough v. State*, 47 So. 3d 1206, 1210 (¶18)

(Miss. Ct. App. 2010) (citation omitted). Furthermore, this Court reviews approximately one hundred claims for post-conviction relief each year. For the sake of judicial economy, we decline to place the unreasonable burden upon this Court to search out every issue not raised by either party.

¶18. THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT DENYING THE MOTION FOR POST-CONVICTION RELIEF IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO HINDS COUNTY.

LEE, C.J., AND MYERS, J., CONCUR. IRVING, P.J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION. CARLTON, J., CONCURS IN RESULT ONLY WITH SEPARATE WRITTEN OPINION. ROBERTS, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY GRIFFIS, P.J., BARNES AND MAXWELL, JJ. RUSSELL, J., NOT PARTICIPATING.

CARLTON, J., CONCURRING IN RESULT ONLY:

¶19. I concur with the result of the majority and find no need for a dissent. This Court has acknowledged that appellate courts may affirm a trial court's decision on a different basis underlying the trial court's decision. *Riley v. Town of Lambert*, 856 So. 2d 721, 723 (¶11) (Miss. Ct. App. 2003). The dissent takes issue with the majority opinion's affirmance of the circuit court's denial of Williams's motion for post-conviction relief (PCR) on its merits. The dissent would instead vacate the circuit court's judgment and remand the case to the circuit court to dismiss for lack of jurisdiction. Such a procedure constitutes a judicially inefficient disposition that reaches the same result. As the majority acknowledges, neither party raises an issue as to the circuit court's lack of jurisdiction; hence, that issue is not briefed before this Court. The majority also notes that even if the circuit court lacked jurisdiction, the PCR motion still lacks merit. Nonetheless, if this Court wishes to dismiss on a basis not briefed or raised before this Court pertaining to a lack of jurisdiction, then we

may request that the appellate record be supplemented or order additional briefing, if needed, to decide properly the case with accurate information, instead of relying on assumptions. To direct the circuit court to dismiss for lack of jurisdiction assumes that the collateral criminal case file fails to contain permission from the Mississippi Supreme Court for Williams to file a motion for PCR and assumes that the circuit court, thus, failed to ascertain jurisdiction. *See Willie v. State*, 2009-CP-01918-COA, 2011 WL 1467619 *2 (¶8) (Miss. Ct. App. April 19, 2011).¹

¶20. The Mississippi Rule of Appellate Procedure 10 requires the parties to designate the content of the record. Rule 10 also specifies that the record shall consist of the designated papers and exhibits filed in the trial court, including the transcript of the proceedings, if any, and a certified copy of the clerk's docket entries at the trial court. When filing a PCR motion, the motion is filed in a separate civil cause, even though the movant seeks relief from a sentence imposed for a criminal conviction. Often, the same documents that a movant designates for the record on appeal in a PCR case are also part of the record in the related criminal cause. Those documents, for whatever reason, might not appear in the appellate record even though they exist in the related file of the criminal cause. I submit that in such instances, this Court may direct supplementation of the record for missing documents or may request additional briefing prior to reaching a decision in a case.

ROBERTS, J., DISSENTING:

¶21. Today's case is a simple one. In the scheme contained in the Mississippi Uniform

¹ I note that this opinion is still subject to revision or withdrawal.

Post-Conviction Collateral Relief Act, when a prisoner seeks a collateral attack on his conviction or sentence, he *must* commence his attack in the court that last had jurisdiction over his conviction and sentence. *Martin v. State*, 556 So. 2d 357, 359 (Miss. 1990). The court that last exercises jurisdiction has original, *exclusive* jurisdiction to entertain any attempt at a collateral attack. *Id.* In Antonio Williams's case, that court was, most definitely, the Mississippi Supreme Court and not the Hinds County Circuit Court. Unfortunately, it is clear from the record before us that Williams knew this, but he attempts an end-run by filing his motion for post-conviction relief (PCR) in the circuit court without first obtaining permission from the supreme court. As such, the circuit court was without jurisdiction to entertain Williams's PCR motion. The majority affirms the circuit court's dismissal of Williams' PCR motion on the merits; however, I would vacate the circuit court's judgment and remand the case to the circuit court to dismiss for lack of jurisdiction. Therefore, I dissent.

¶22. On December 8, 1987, a jury in the circuit court found Williams guilty of murder. *Williams v. State*, 566 So. 2d 469, 470 (Miss. 1990). Having been found a habitual offender pursuant to Mississippi Code Annotated section 99-19-81 (Rev. 2000), Williams was sentenced to life imprisonment without the eligibility for parole. *Id.* at 470-471. Williams appealed to the supreme court. The supreme court affirmed both Williams's conviction and sentence. *Williams*, 566 So. 2d 472 (Miss. 1990). On November 6, 2003, in response to Williams's application for leave to proceed with his PCR motion in the circuit court, the supreme court entered an order denying his application. Williams again filed an application with the supreme court for leave to file a successive PCR motion in the circuit court on

October 20, 2006. This application was, once again, denied by the supreme court by written order filed on November 15, 2006.

¶23. Undeterred by the supreme court's two previous dismissals of his attempt to gain permission to file a PCR motion in the circuit court as required by Mississippi Code Annotated section 99-39-7 (Supp. 2010), Williams attempted an end-run around this requirement by filing his current PCR motion in the circuit court in April 2009. On the face of his motion, Williams conveniently fails to mention his appeal and affirmance by the supreme court. Moreover, he swears under oath that "[t]here have been no prior proceedings in any court State o[r] Federal on the issues presented in this instant motion." The circuit court denied Williams's PCR motion; it is from this denial that Williams appeals.

¶24. It is well settled that when there is an issue regarding jurisdiction not raised by either party, it is the duty of the appellate court to raise the issue on its own motion. *Winborn v. State*, 213 Miss. 322, 323, 56 So. 2d 885, 885 (1952); *Drummond v. State*, 184 Miss. 738, 185 So. 207, 209 (1938). I must note that just recently, on April 19, 2011, this Court unanimously vacated and remanded another inmate's PCR appeal under almost identical circumstances. In *Willie v. State*, 2009-CP-01918-COA (¶4) (Miss. Ct. App. April 19, 2011), we found that "[a]lthough neither party raised the jurisdictional issue in its brief, it is well established that it is '[t]he duty of this Court to raise the question which involves jurisdiction, on its own motion[.]'" (quoting *Slater v. Bishop*, 251 Miss. 306, 308, 169 So. 2d 465, 467 (1964)). The majority claims "[f]or the sake of judicial economy, we decline to place the unreasonable burden upon this Court to search out every issue not raised by either party." While I acknowledge that searching the records of this Court and its clerk's office can be

difficult and frustrating at times, when jurisdictional issues exist, such a search is essential. Failure to do so could prove embarrassing, if not disastrous. Consider Williams's case as an example. The supreme court validated Williams's murder conviction and sentence when it affirmed both in 1990. The mandate issued. Consider, for the sake of argument, that this Court found Williams's ineffective-assistance-of-counsel claim meritorious. We set aside his conviction or sentence and remand the case for a new trial. Upon certiorari review, no doubt could exist that this Court would be reversed since the supreme court has never granted Williams permission to make a collateral attack on his conviction or sentence. Such outcome is not, I submit, consistent with judicial economy.

¶25. Pursuant to Mississippi Code Annotated section 99-39-7, before Williams may file a PCR motion in the circuit court, he must first obtain the permission of the supreme court.

The statute reads in pertinent part:

Where the conviction and sentence have been affirmed on appeal or the appeal dismissed, the motion under this article shall *not* be filed in the trial court until the motion shall have first been presented to a quorum of the Justices of the Supreme Court of Mississippi, convened for said purpose either in term time or in vacation, and an order granted allowing the filing of such motion in the trial court.

Id. (emphasis added).

¶26. This Court has held that: “[W]hen a defendant has raised issues that are considered and rejected on direct appeal, the defendant must obtain the permission of the supreme court in order to file a [PCR] motion in the circuit court.” *Lacy v. State*, 821 So. 2d 850, 852 (¶6) (Miss. Ct. App. 2001). Therefore, Williams should have obtained the permission of the supreme court before filing his PCR in the circuit court because “the court to last exercise

jurisdiction in the case has *exclusive*, original jurisdiction over the [PCR motion].” *Martin*, 556 So. 2d at 359 (emphasis added).

¶27. It is clear that Williams’s murder conviction and sentence were affirmed by the supreme court in 1990. This action makes the supreme court the last court to exercise jurisdiction over the case; thus, it retained exclusive jurisdiction over the current PCR motion. The statute clearly requires Williams to obtain permission from the supreme court to file his PCR motion in the circuit court; however, the record before us is simply devoid of any such request from Williams or any order from the supreme court indicating he was given permission to file his current PCR motion in the circuit court. In fact, the records in the supreme court clerk’s office relevant to Williams’s murder conviction, of which we take judicial notice, only contain Williams’s previous requests for permission and the subsequent denials of permission by the supreme court. It is clear from Williams’s prior requests that he was fully aware of the statute’s requirement that he seek permission from the supreme court. By filing his PCR motion directly with the circuit court, he is in blatant disregard of the statute’s requirements.

¶28. Further, Williams’s current PCR motion does not comply with Mississippi Code Annotated section 99-39-9 (Supp. 2010), which outlines the content required in PCR motions. The statute reads in pertinent part:

A motion under this article shall name the State of Mississippi as respondent and shall contain the following:

. . . .

(f) The identity of any previous proceedings in federal or state courts that the petitioner may have taken to secure relief from

his conviction and sentence.

Miss. Code Ann. § 99-39-9(1)(f).

¶29. Generally, pro se motions will not be avoided based on “inartfully drafted pleadings”; however, this Court has held that pro se “post-conviction petitions must meet the dictates of section 99-39-9 of the Mississippi Code” *Winston v. State*, 893 So. 2d 274, 275 (¶4) (Miss. Ct. App. 2005). Although required by statute, Williams’s PCR motion does not indicate that he had directly appealed his conviction and sentence to the supreme court, nor does it indicate that he previously filed any requests with the supreme court for permission to file his PCR motion in the trial court. He certainly does not mention that the supreme court had twice previously denied him permission. Williams’s failure to provide all required information in his PCR motion should have resulted in its dismissal by the circuit court.

¶30. Because Williams failed to obtain permission from the supreme court to file his PCR motion in the circuit court, the circuit court did not have jurisdiction to decide his motion on the merits. I find that the circuit court should have dismissed Williams’s PCR motion without prejudice. If Williams obtains permission from the supreme court to file his PCR motion, he may proceed in the circuit court.

GRIFFIS, P.J., BARNES AND MAXWELL, JJ., JOIN THIS OPINION.